IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4737 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHALAXMI FABRIC MILLS LTD

Versus

STATE OF GUJARAT

Appearance:

MR PARESH M DAVE for Petitioners

Ms.Harsha Devani, ASSTT. GOVERNMENT PLEADER for Respondents nos.1, 2 and 3.

MR YF MEHTA for Respondent No. 4

MR HARESH J TRIVEDI for Respondent No. 5

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 12/07/2000

ORAL JUDGEMENT : (Per M.R. Calla, J.)

Rule. Service of the rule is waived in respect of respondent nos.1 to 3 by the learned Assistant Government Pleader and in respect of respondents nos.4 and 5 by Mr.Y.F. Mehta and Mr.H.J. Trivedi respectively.

2. At the request of both the sides, the matter is taken up for final hearing right today.

3. Through this Special Civil Application, the petitioners seek a direction against the respondents for refund of a sum of Rs.58,794/-. The petitioners were served with the demand notice dated 16.11.1995 for payment of an amount of Rs.11,35,104/-, i.e. 1% of their gross turn over for the year 1993- 94 or 1994- 95, whichever is higher with reference to the High Court's order dated 5.8.1995 in Special Civil Application No.770 of 1995, between Pravinbhai K. Patel and & others Vs. State of Gujarat & others. This amount was required to be paid for the purpose of upliftment and betterment of the village and it was said to be one time and one year exercise only. It appears that the recovery was not effected as the matter remained the subject matter of litigation. The learned counsel for the petitioners has submitted that after the issuance of the aforesaid demand notice dated 16.11.1995, the first letter which they received is dated 20.2.1998 from the Forest and Environment Department of the Govt. of Gujarat. Through this letter dated 20.2.1998, the petitioner was told that the petitioner had only paid a partial amount towards 1% of the annual turn over and it was, therefore, directed to make payment of due amount to the Government by Demand Defat within 15 days and in case the full amount has already been paid, supporting documents, such as, Chartered Accountant's certificate, etc. may be furnished. The petitioners then sent a letter dated 13.4.1998 to the Forest and Environment Department mentioning therein that vide cheque dated 11.10.1996 drawn on Bank of Baroda, an amount of Rs.10,58,947/- had been paid by the petitioners. It was further stated that this figure of Rs.10,58,947/- was arrived at on the basis of the higher turn over between the years 1992- 93 and 1993- 94, and whereas the turn over for the year 1992- 93 is higher than that of 1993- 94, the amount was

calculated on the basis of the turn over of 1992- 93. It is then stated that as per the Forest and Environment Department's letter dated 20.2.1998, in terms of the directions of the High Court, the petitioners were supposed to make payment of 1% on the turn over for the period 1993- 94 or 1994- 95, whichever is higher and that the petitioners' turn over for the year 1994- 95 was higher than that of 1993- 94 and on the basis of the higher turn over of the year 1994- 95, 1% amount comes out to be Rs.10,00,153/-, whereas the petitioners had paid Rs.10,58,947/- on the basis of the higher turn over of the year 1992- 93. On that basis it was claimed by the petitioners that an amount of Rs.10,58,947/- (-) Rs.10,00,153/- = Rs.58,794/-, had been paid in excess. In support of their claim as above, the petitioners also enclosed certificates issued by the Chartered Accountants for the years 1992- 93, 1993- 94 and 1994- 95, showing the turn over of the units. A copy of the earlier letter dated 14.10.1996 whereby the payment of Rs.10,58,947/was sent by cheque No.009848 dated 11.10.1996 drawn on Bank of Baroda was also sent. The Forest and Environment Department instead of verifying the correct facts of the case stated by the petitioners in letter dated 13.4.1998 sent a letter dated 21.1.1999 to the petitioner, which makes a very interesting reading. The same is reproduced hereunder.

"No.EPN 1097/ 4313/P(Part I)
Government of Gujarat
Forest and Environment Deptt.
Block No.14, 8th Floor
Sachivalaya, Gandhinagar

To
Messrs Mahalaxmi Fabric Mills Ltd.
NH Narol
Near Narol Char Rasta
Narol, Ahmedabad. Dt.21 Jan. 1999

Sub.: Excess payment of 1% of the annual turn over as per Hon'ble High Court decision - reg.

With reference to your letter dated 25.8.98 on the subject cited above, you are requested to bring the said facts on record before the Hon'ble High Court of Gujarat. You would therefore, file appropriate and/ or necessary application and seek order from the High Court of Gujarat.

Sd/-
(S.M. Damor)
Section Officer
Forests & Environment Deptt."

4. This letter sent by the Section Officer of the Forest and Environment Department has precipitated the filing of the present Special Civil Application, which could be very easily avoided by just examining as to which was the year to be chosen for the purpose of turn over by the petitioners. However, the present petition was filed in this Court on 7.7.1999, wherein notice was issued on 13.9.1999 and made returnable on 15.10.1999. On 15.2.2000, at the request of the learned counsel for the petitioners, Gujarat Industrial Development Corporation was also arrayed as respondent no.4 and later on, i.e. on 10.4.2000, the Gujarat Pollution Control Board ("GPCB" for brevity) was also arrayed as respondent no.5 at the request of the petitioners. On behalf of respondent no.2, Forest and Environment Department, a reply dated 16.3.2000 has been filed, to which an affidavit in rejoinder dated 19.4.2000 was filed by the petitioners. From the xerox copy of the document at Annexure 'B' dated 16.11.1995 filed along with the affidavit in reply of respondent no.2 and its enclosure therewith, it appears that the Assistant Sales Tax Commissioner had sent this letter dated 16.11.1995 to the Deputy Chief Engineer, Gujarat Industrial Development Corporation giving details of turn over of the various units under his jurisdiction for the years 1993- 94 and 1994- 95. In the statement which is enclosed to this letter dated 16.11.1995, the name of petitioner no.1 is included at serial no.38 and according to the Assistant Sales Tax Commissioner, the turn over of the petitioner unit for the year 1993- 94 was Rs.10,70,09,762/- and that for the year 1994- 95, the turn over was Rs.11,35,01,439/- and on the basis of higher turn over for the year 1994- 95, the amount to be deposited by the petitioner unit, was determined as 11,35,014/-. The petitioner also raised a further controversy through the rejoinder that the amount of excise duty had been wrongly included in the turn over and that for the year 1994- 95 it had paid an excess duty of Rs.1,29,52,960/-, and the same could not have been included in the turn over and that this amount also deserves to be deducted from the turn over for the year 1994- 95. Along with the rejoinder, a copy of the certificate issued by the Chartered Accountant has been produced.

5. Having gone through the pleadings and having

heard the learned counsel for both the sides, we find that it is not for this Court to take up the exercise of calculating the turn over and to enter into the vortex of accounts. In fact, the Forest and Environment Department has proceeded on the basis of the data which was given to it by the Sales Tax Department. If at all there is any error with regard to the total amount of the turn over and the payment which has been made and the petitioners feel that excise duty could not have been included in the turn over, the petitioners ought to have approached the Sales Tax Department for correction of the figures and they could have also approached the Gujarat Industrial Development Corporation to verify the correctness of the figures from the Sales Tax Department. So far as the question of the year which should have been taken as the basis for the purpose of turn over, it is clear that under the High Court's order, the year has to be an year of higher turn over in the batch of years, 1993-94 and 1994- 95, and the petitioners' say is that they had wrongly made payment on the basis of 1992- 93 turn over (out of the batch of years 1991- 92 and 1992- 93), whereas it should have been on the basis of 1994- 95, an year of higher turn over out of the batch of 1993- 94 and 1994- 95.

6. Therefore, we direct that should the petitioner even now approach the Sales Tax Department or the Gujarat Industrial Development Corporation ("GIDC" for brevity) and the Forest and Environment Department for the purpose of correction of the gross turn over for the relevant year as per High Court's order dated 5.8.1995, as also in respect of the amount of turn over as to whether it should include the paid excise duty or not, the authorities of the concerned departments shall pass appropriate orders thereon in accordance with law. In case any correction is made, revised orders shall be passed by the Sales Tax Department, the GIDC and the Forest and Environment Department accordingly. In case any modification is made, all legal consequences shall follow either with regard to recovery or refund, if any, as the case may be.

7. The learned counsel for the petitioners has given out that even as against the demand notice dated 16.11.1995, which was for the sum of Rs.11,35,014/-, the petitioner has already deposited a sum of Rs.10,58,947/-. The concerned department and authorities shall, therefore, determine the actual amount as per the data, which may now be supplied by the Sales Tax Department through the GIDC and the Forest and Environment Department shall also decide as to whether the

petitioners were obliged to pay on the turn over of the year 1992- 93, or 1994- 95 as was the controversy raised by the petitioners in their letter dated 13.4.1998 for which a letter dated 21.1.1999 was sent by the department in very unusual terms asking them to approach the High Court -- that is the matter about which the Forest and Environment Department itself was in a position to decide keeping in view the earlier judgement of this Court, which had already been referred in the letter dated 20.2.1998. Such an exercise will be undertaken by the concerned departmental authorities immediately after service of the certified copy of this judgement and the same shall be completed thereafter at the earliest possible opportunity, but in no case later than three months thereafter. Ordered accordingly.

8. This Special Civil Application is partly allowed to the above extent. Rule is made absolute accordingly. No order as to costs.

(M.R. Calla, J.)

12th July 2000 (Ravi R. Tripathi, J.)

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